85-2018

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

James J. Carras
Petitioner

vs.

Hull and Smith Horse Vans, Inc.,
Respondent

ON WRIT OF CERTIORARI TO THE
MICHIGAN COURT OF APPEALS

RESPONSE TO PETITION FOR WRIT OF CERTIORARI AND MOTION TO DISMISS PETITION

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QUESTIONS PRESENTED

(1) Is the decision of the Michigan Supreme Court of March 18, 1986 a final decision within the meaning of Rule 17, Supreme Court Rules?

(2) May a private citizen assert Plaintiff's violation of Interstate Commerce Code section 10921 as a defense to a state court collection action sounding in contract?

(3) Was the Michigan Court of Appeals decision that Respondent Hull & Smith Horse Vans, Inc. was not barred from collecting their charge for hauling Petitioner Carras' horses for him in conflict with the decision of a Federal Court of Appeals?

Respondent Hull and Smith Horse Vans, Inc. states these questions must be answered "NO".

ARGUMENT AND AUTHORITIES

(1) IS THE DECISION OF THE MICHIGAN SUPREME COURT OF MARCH 18, 1986, A FINAL DECISION WITH THE MEANING OF RULE 17, SUPREME COURT RULES?

Petitioner Carras has styled his current Petition as an application for writ of certiorari to the Michigan Court of Appeals, 144 Mich App 712. That case was appealed to the Michigan Supreme Court, which denied leave to appeal (Appendix B, Petition). No request for rehearing was filed by Petitioner Carras in the Michigan Supreme Court, although such a motion is specifically allowed by MCR 7.313(E) (attached hereto as Exhibit 1). As such, the decision of the Michigan Court of Appeals is not a "final judgment or decree

of the highest court of a State" within the meaning of 28 U.S.C.A. Section 1257, and thus Petitioner Carras' petition is improvidently filed.

(2) MAY A PRIVATE CITIZEN ASSERT VIOLATION OF INTERSTATE COMMERCE CODE SECTION 10921, AS A DEFENSE TO A STATE COURT COLLECTION ACTION SOUNDING IN CONTRACT?

Throughout this proceeding, from the Bay County District Court through the Michigan Supreme Court (and in at least three federal trial and appellate courts), Defendant-Appellant Carras has maintained that he should not be held responsible for paying Plaintiff-Appellee Hull and Smith their charges for hauling his race horses, because Hull and Smith did not have a certificate of public convenience and necessity covering the motor carrier routes used to transport Carras' horses. Defendant-Appellant has described these charges as "illegal", and cites several ICC rate

cases to support his claim that because Hull and Smith did not have the proper ICC certificate, Defendant-Appellant Carras need not pay the bill for hauling his horses.

The "federal law" Defendant-Appellant Carras refers to at several places in his Brief is the Interstate Commerce Act, 49 USC 10101 et seq. (hereafter the Act). This federal law establishes the Interstate Commerce Commission (hereafter Commission) and its jurisdiction over interstate carriers, including motor common carriers such as Hull and Smith. The authority and enforcement powers of both the Commission and private persons is set forth in chapter 117 of the Act; in genral, all enforcement power is vested in the Commission, which may act on its own initiative or on

complaint. Private persons have only those rights and remedies set forth in Section 11705 of the Act; all other enforcement power is reserved by the Commission. In this section, subsections(a)-(b) (3) state that a person injured "may file a complaint with the Commission, and then file a civil action to enforce the Commission order if not obeyed". In addition, subsections (c)(1-2) relate only to subchapters I or III of Chapter 105 of the Act; that is, only to rail and water carrier transportation. Thus, it is clear a person injured by a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission is limited to filing his complaint with the Commission; he may not, by the statute, seek original affirmative relief in the courts. Plaintiff Hull and Smith respectfully suggests that if

Defendant Carras feels Plaintiff has violated some section of the Interstate Commerce Act in hauling his horses at his request, he may take his complaint to the Commission, but he has no statutory right to assert this claim in a state civil action as a defense to Plaintiff's claim for hauling fees.

The prevailing scheme of the Act is to foster orderly competition among interstate carriers, resulting in fair rates and service for shippers. Regarding the particular sections of the Code and regulations relied upon by Defendant Carras, which designate certain territories for carriers, the class especially benefitted is all carriers who are competing in a given freight-hauling business. Defendant Carras can hardly be

considered a part of this class; it makes no difference to him as a shipper whether Plaintiff Hull and Smith or another horse van carrier hauls his horses. There is no indication of legislative intent to create any private federal right in favor of shippers like Defendant Carras; in fact, all enforcement power of the Code is specifically reserved to the Commission. Finally, as decided by Honorable James Harvey (Petitioner's Exhibit C), on Defendant-Appellee's removal of claim to federal court, the claim pled here by Plaintiff Hull and Smith is solely a state cause of action; it would be inappropriate to allow Defendant Carras affirmative relief based solely on federal law. It must therefore follow that Mr. Carras does not have standing to raise Respondent's territorial ICC authority as an affirmative defense.

(3) WAS THE MICHIGAN COURT OF APPEALS DECISION THAT RESPONDENT HULL AND SMITH HORSE VANS, INC. WAS NOT BARRED FROM COLLECTING THEIR CHARGE FOR HAULING PETITIONER CARRAS' HORSES FOR HIM IN CONFLICT WITH THE DECISION OF A FEDERAL COURT OF APPEALS?

At Page 7 of his Petition, Mr. Carras cites three U.S. Court of Appeals decisions which, he claims, hold that a common carrier cannot recover "charges" when there is "illegal carriage off route". According to Petitioner, these decisions are all in conflict with the Michigan Court of Appeals decision at issue here (Petition, Appendix A).

The cases cited by Petitioner are undercharge cases, where the seminal issue

was whether the carrier could recover the difference between the original tariff rate charged and paid by the shipper and a new, higher rate filed by the carrier before the services were completed, where the transfer was outside the carrier's authorized route. The holding in each case was that the carrier could not recover this difference, or "undercharge"; however, no case holds that such a carrier is obligated to haul a shipper's freight for nothing. As such NAJAD, FRY TRUCKING CO., and MARS EXPRESS, INC. (all cited by Petitioner Carras) are inapposite to the present case.

The Michigan Court of Appeals, as did Judge Penzien of the Bay County Circuit Court, cited ETS-HOKIN and GALVIN vs. MAAS TRANSPORT, INC., 380 F.2d 258(CA 8, 1967). Petitioner Carras has taken issue

with reliance upon this decision throughout this case; in fact, in his brief on appeal to the Michigan Supreme Court, Carras states flatly that the Michigan Court of Appeals "simply completely misunderstood the 8th Circuit decision".

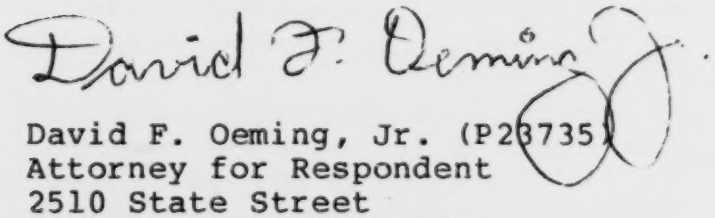
There is no "conflict" between the instant Michigan Court of Appeals decision, which relies in part on ETS-HOKIN and GALVIN, supra, and the federal appellate court decisions cited by Petitioner Carras. The essential holding of NYAD, FRY TRUCKING CO., and MARS EXPRESS, INC, is that the carrier in each may be paid according to the tariff on record, not a later, or different rate. The basic holding (on this issue) of the Michigan Court of Appeals is that Respondent Hull and Smith may recover its reasonable charge for

hauling Petitioner's horses for him as measured by the applicable tariff. No other, or different, hauling rate was at issue before the Michigan courts; thus, the conflict alleged by Petitioner Carras simply does not exist.

CONCLUSION

Petitioner Carras did not seek a final judgment from the Michigan Supreme Court, does not have standing to assert ICC regulation violations as a defense to this state court collection action, and has not demonstrated a conflict between this Michigan Court of Appeals decision, and any federal appellate court decision. His petition should be denied, with costs to Respondent Hull and Smith Horse Vans, Inc.

Respectfully submitted,



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APPENDIX A

RULE 7.313 MOTIONS IN SUPREME COURT

(A) What to File. To have a motion heard, a party must file with the clerk:

1. a motion stating briefly but distinctly the grounds on which it is based and the relief required;

2. an affidavit supporting any allegations of fact in the motion;

3. a notice that the motion will be heard ona Tuesday at least 7 days after the motion is filed;

4. the fee provided by MCR 7.319(B)(7)(c); and

5. proof that the motion and supporting papers were served on the opposing party.

Eight copies of the motion must be filed, except only 2 copies need be filed of a motion to extend time, to place a case on or withdraw a case from the session calendar, or for oral argument. The attorney must sign the motion. By filing a motion for immediate consideration, a party may obtain an earlier hearing on the motion.

(E) Motion for Reconsideration. To move for reconsideration of a Court order, a party must file the items required by subrule(A) within 21 days after the date of certification of the order. The clerk shall refuse to accept for filing any motion for

reconsideration of an order denying a motion for reconsideration. The filing of a motion for reconsideration does not stay the effect of the order addressed in the motion.